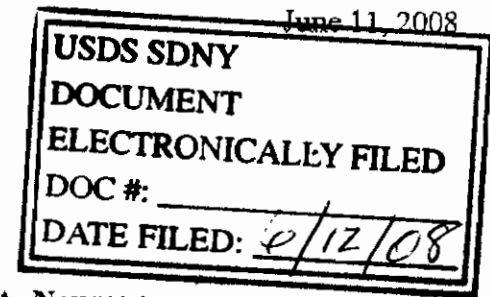


VIA FAX 212-805-7930

MEMO ENDORSED

Magistrate Judge James C. Francis
United States District Court
Southern District of New York
500 Pearl St.
New York, NY 10007-1312
Phone: 212-805-0206; Fax 212-805-7930



**Re: Michael P. Tierney v. Gerard A. Neumann,
Case No. 07 CV 04090 (BSJ) (S.D.N.Y.)**

Dear Judge Francis:

I represent Plaintiff Michael Tierney and am responding to the last minute request of defendant Gerard Neumann for a stay of discovery. (Defendant's counsel did not give me the courtesy of calling or e-mailing me regarding its motion, but only sent a fax. As a result, I became aware only at 5:00 p.m. this evening when the Court called to seek a response. I respectfully request an opportunity to file supplemental papers if deemed necessary by the Court.)

Moreover, only this morning shortly before noon – presumably while it was preparing its lengthy papers in support of a motion for a stay – counsel for defendant confirmed the deposition of my client, which he himself had noticed three weeks ago, on May 23. Both my client and I cleared our busy schedules to be available for the deposition.

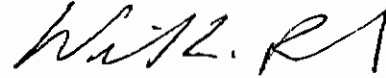
Also, last week, counsel for defendant requested a stay of discovery. I refused, on the grounds that the discovery deadline is June 30, 2008, that there are only three depositions noticed, and that document discovery is virtually complete. Defendant's counsel wrote back to say he understood. He could have filed his motion for a stay of discovery last week, but instead waited until only a few hours before the scheduled deposition of my client.

The complaint in this action was filed on April 24, 2007, and the answer by defendant on May 29, 2007 – both over a year ago. Defendant decided to file a motion for judgment on the pleadings only last month, after he had noticed the deposition of my client and with the discovery deadline only a month away. The rules do not provide for a stay of discovery simply because a motion for judgment on the pleadings has been filed. Moreover, here, defendant himself has noticed my client's deposition, and confirmed that it is going forward only this morning. His motion to stay discovery only a couple of hours later smacks of bad faith.

My client is an executive who travels frequently overseas. He has made himself available for the deposition tomorrow, and counsel for both sides are ready. We respectfully request the court to allow the deposition to go forward, as requested and confirmed by defendant

and his counsel. We also request that -- in light of the facts that the complaint and answer in this case were filed over a year ago, and that discovery is scheduled to be, and easily can be, completed in less than month -- defendant's motion for stay of discovery be denied.

Sincerely,



William C. Rand

cc:

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One Battery Park Plaza
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6/11/08

Defendant's application for a stay of discovery is denied. Had defendant moved for judgment on the pleadings and for a stay of discovery at the outset of the case, the equities might well have dictated a different result.

SO ORDERED.
James C. Francis IV
VCMJ